Tax Evasion and Human Rights

Stephen B. Cohen Mi 27 Apr 2016

The data leaks – from Liechtenstein, Switzerland, Luxemburg, and now Panama – raise a critical question: Do states that provide bank secrecy and a tax haven for wealthy citizens of developing countries violate internationally recognized human rights?

No international human rights agreement mentions bank secrecy or tax evasion. Moreover, no international tax treaty mentions human rights. Nevertheless, bank secrecy has a significant human rights impact if governments of developing countries are thereby deprived of resources needed to meet basic economic rights guaranteed by the United Nations Covenant on Economic, Social, and Cultural Rights.

The United Nations Covenant explicitly recognizes individual rights to adequate food, clothing, and housing (Article 11); health care, clean water, and sanitation (Article 12); and education (Article 13). The Covenant also imposes obligations on member states to implement these rights. Article 2 states:

> *"Each State Party to the present Covenant undertakes to take steps . . . , to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant . . . ."*

There is no explicit language restricting the obligations to a state's own territory. Moreover, at least one committee of legal experts, convened by Maastricht University and the International Commission of Jurists, interprets the Covenant to impose extraterritorial obligations. Articles 19 and 20 of The Maastricht Principles call on states to "refrain from conduct which nullifies or impairs the enjoyment and exercise of economic . . . rights of persons outside their territories . . . or which impairs the ability of another State to comply with that State's . . . obligations as regards economic rights."

More specifically, Articles 19 and 20 of The Maastricht Principles call on states to "refrain from conduct which nullifies or impairs the enjoyment and exercise of economic . . . rights of persons outside their territories . . . or which impairs the ability of another State to comply with that State's . . . obligations as regards economic rights."

For the developing world, the tax gap created by offshore accounts is a much larger problem than for developed, industrialized economies. Only about 2% of North American private wealth and 8% of European wealth is invested offshore, compared with more than 25% of Latin American and 33% of Middle Eastern and African private wealth. The tax revenues lost each year to developing countries from offshore accounts at least equals (and may even be greater than) the total of official worldwide development assistance.

Thus, the United Nations Covenant should be interpreted to prohibit state mandated bank secrecy, which facilitates tax evasion by wealthy residents of the developing world. In other words, bank secrecy laws of Lichtenstein, Panama, and Switzerland, for example, violate internationally recognized human rights.

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